UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ADOLPHO FARINELLA Plaintiff, v. EQUIFAX INFORMATION SERVICES, LLC Defendant.	Civil Action **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff, Adolpho Farinella, by and through his undersigned counsel, Law Offices of Gus Michael Farinella, PC, alleges the following against Defendant, Equifax Information Services, LLC ("Equifax" or "Defendant") based on personal knowledge with respect to himself and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters:

NATURE OF THE ACTION

1. Plaintiff brings this action on an individual basis against Equifax for their failure to secure and safeguard his personal and private information.
2. On July 29, 2017, Equifax discovered unauthorized access to its databases storing the Plaintiff's confidential and private information.
3. On September 7, 2017, Equifax publicly announced that due to vulnerability in its systems, its files were accessed by criminals for at least the period of mid-May through July of 2017 (the "Security Breach"). The information accessed includes names, Social Security numbers, birth dates, addresses, and driver's license numbers, in addition to

credit card numbers for some consumers and other documents containing personal identity information (the "Private Information").

4. Equifax's security failures enabled and facilitated the criminals' access, obtainment, theft, and misuse of Plaintiff's Private Information. Unauthorized persons gained access to Equifax's databases through vulnerabilities in its security and executed commands that caused the system to transmit electronic data comprising the Plaintiff's Private Information to the unauthorized persons. Equifax's security failures also put Plaintiff at serious, immediate, and ongoing risk of identity theft, and additionally, will cause costs and expenses to Plaintiff attributable to responding, identifying, and correcting damages that were reasonably foreseeable as a result of Equifax's willful and negligent conduct in properly safeguarding his Private Information.

5. The Security Breach was caused and enabled by Equifax's knowing violation of its obligations to secure consumer information. Equifax failed to comply with security standards and allowed the Plaintiff's Private Information, collected by Equifax, to be compromised by cutting corners on security measures that could have prevented or mitigated the Security Breach.

6. Equifax could have prevented the Security Breach. The Security Breach was the inevitable result of Equifax's inadequate approach to data security and the protection of the Plaintiff's Private Information that is collected during the course of its business.

7. Equifax disregarded the rights of Plaintiff by intentionally, willfully, recklessly, or negligently failing to take adequate and reasonable measures to ensure its data systems were protected, failing to disclose to its consumers, including Plaintiff, the material fact that it did not have adequate computer systems and security practices to safeguard their

Private Information, failing to take available steps to prevent and stop the breach from ever happening, and failing to monitor and detect the breach on a timely basis.

8. Accordingly, Plaintiff asserts claims for violation of the Fair Credit Reporting Act, violation of the New York General Business Law, and negligence. Plaintiff seeks monetary damages, punitive damages, statutory damages, attorneys' fees, and all other relief as authorized in equity and by law.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over Plaintiff's Fair Credit Reporting Act ("FCRA") claims pursuant to 15 U.S.C § 1681(p) and 28 U.S.C. § 1331. This Court also has subject matter jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

10. This Court has personal jurisdiction over Equifax because at all relevant times, Equifax conducted (and continues to conduct) substantial business in the Eastern District of New York.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because a substantial part, if not all, of the events giving rise to this action occurred in the Eastern District of New York, and Equifax resides and conducts substantial business in the Eastern District of New York.

PARTIES

12. Plaintiff, Adolpho Farinella, is a natural person, resides in North Massapequa, and is a resident of the State of New York. After learning of the Security Breach, Plaintiff used a tool on Equifax's website to determine whether his Private Information was effected.

Using this tool, Plaintiff determined that his Private Information was effected by the Security Breach. As a result of the Security Breach, Plaintiff suffered from the deprivation of the value of his Private Information and will incur future costs and expenditures of time to protect himself from identity theft and other damages resulting from his Private Information being furnished to unauthorized third parties.

13. Plaintiff, is a “consumer” as defined by 15 U.S.C. § 1681a(c).

14. Upon information and belief, Equifax is a corporation incorporated under the laws of the State of Georgia authorized to do business in the State of New York. Defendant Equifax is a nationwide consumer reporting agency and purveyor of credit monitoring and identity theft protection services.

15. Equifax is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing “consumer reports”, as defined in 15 U.S.C. § 1681(d) to third parties.

16. Equifax disburses such consumer reports to third parties under contract for monetary compensation.

17. Equifax is a “consumer reporting agency,” as defined by 15 U.S.C. § 1681(f).

FACTUAL BACKGROUND

18. Equifax is in the business of collecting, assessing, and maintaining the Private Information of approximately 800 million consumers around the world in order to sell this information to third parties in the form of consumer credit reports, consumer insurance reports, or consumer demographic or analytics information. It also sells credit protection and identity theft monitoring services to consumers.

19. In the years preceding Equifax's announcement of the Security Breach, several entities storing large quantities of consumer data caused massive security breaches, including health insurer Anthem, Yahoo, Equifax's competitor, Experian, and many others. Equifax knew or should have known that the Private Information contained in its databases was a prime target for hackers. In fact, it makes many millions of dollars in profits convincing Americans to buy its credit protection and identity theft monitoring services to guard against such breaches and the damages they cause. Despite this, Equifax failed to take adequate steps to secure its systems.

20. The Private Information of Plaintiff is private and sensitive in nature and was left inadequately protected by Equifax. Equifax did not obtain Plaintiff's consent to disclose their Private Information to any other person as required by applicable law and industry standards.

The Equifax Security Breach

21. On September 7, 2017, Equifax announced that its systems were compromised by cybercriminals. The Security Breach began in mid-May, 2017, and was not detected by Equifax for several months. Equifax admits the Security Breach arose from a "U.S. website application vulnerability" in its systems.

22. After Equifax discovered the Security Breach on July 29, 2017, it waited more than six weeks before it began notifying impacted consumers, including Plaintiff, on September 7, 2017.

23. Plaintiff's information compromised in the Security Breach includes his name, Social Security number, birth date, address, driver's license number, credit card numbers, and

documents containing his personal identity information – all which is now in the hands of criminals.

24. The Security Breach was a direct and proximate result of Equifax's failure to properly safeguard and protect Plaintiff's Private Information from unauthorized access, use, and disclosure, as required by NY State and federal regulations, industry practices, and common law, including Equifax's failure to establish and implement appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of Plaintiff's Private Information to protect against reasonably foreseeable threats to the security or integrity of such information.

25. Equifax had the resources to prevent the Security Breach, but neglected to adequately invest in data security, despite the growing number of well-publicized data breaches.

26. Had Equifax remedied the deficiencies in its data security systems, followed security guidelines, and adopted security measures recommended by experts in the field, Equifax would have prevented the Security Breach and, ultimately, the theft of the Plaintiff's Private Information in its possession and control.

27. Private Information is such a valuable commodity to identity thieves that once the information has been compromised, criminals often trade the information on the "cyber blackmarket" for a number of years. As a result of recent large-scale data breaches, identity thieves and cyber criminals have openly posted stolen private information directly on various Internet websites, making the information publicly available.

28. The value of Plaintiff's Private Information on the black market is substantial. By way of the Security Breach, Equifax has deprived Plaintiff of the substantial value of their Private Information.

Damages Sustained by Plaintiff

29. Plaintiff suffered actual injury in the form of damages to and diminution in the value of his Private Information – a form of intangible property that Plaintiff entrusted to Equifax and that was compromised in and as a result of the Security Breach.

30. Plaintiff has suffered actual injury and damages, including, but not limited to: (i) an increased risk of identity theft and identity fraud; (ii) improper disclosure of their Private Information, which is now in the hands of criminals; (iii) the value of their time spent mitigating the increased risk of identity theft and identity fraud; (iv) deprivation of the value of their Private Information, for which there is a well-established national and international market – for which they are entitled to compensation.

31. Plaintiff has suffered imminent and impending injury arising from the substantially increased risk of future fraud, identity theft and misuse posed by their Private Information being placed in the hands of criminals who have already, or will imminently, misuse such information.

32. Plaintiff has suffered additional damages based on the opportunity cost and value of time that he has been forced to expend to monitor his financial accounts as a result of the Security Breach and his Private Information being compromised.

33. Moreover, Plaintiff has a continuing interest in ensuring that his Private Information, which remains in the possession of Equifax, is protected and safeguarded from future breaches.

34. Acknowledging the damage to Plaintiff, Equifax is instructing consumers to "be vigilant in reviewing their account statements and credit reports," "immediately report any

unauthorized activity to their financial institutions" and to "monitor their personal information."

35. Plaintiff now faces years of constant surveillance of their financial and personal records, monitoring, and loss of rights. Plaintiff is incurring and will continue to incur such damages in addition to any fraudulent use of their Private Information.

COUNT I

Willful Violation of the Fair Credit Reporting Act

36. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

37. As an individual natural person, Plaintiff is a "consumer" entitled to the protections of the FCRA. 15 U.S.C. § 1681a(c).

38. One of the fundamental purposes of the FCRA is to protect consumers' privacy. 15 U.S.C. §1681(a). Protecting consumers' privacy involves adopting reasonable procedures to keep sensitive information confidential. 15 U.S.C. §1681(b).

39. As alleged *supra*, Equifax is a "consumer reporting agency" and is subject to the requirements of the Fair Credit Reporting Act.

40. FCRA enumerates the exclusive purposes for which a consumer reporting agency can furnish consumer reports. 15 U.S.C. § 1681b. FCRA also requires that: Every consumer reporting agency shall maintain reasonable procedures designed to . . . limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. 15 U.S.C. § 1681e.

41. Plaintiff's Private Information is a consumer report under FCRA, because the information bears on, among other things, their credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, physical/medical conditions, and mode of living, and is used or collected, in whole or in part, for the purpose of establishing Plaintiff's eligibility for credit or insurance to be used primarily for personal, family, or household purposes.

42. As a consumer reporting agency, Equifax may only furnish a consumer report under limited circumstances set forth in 15 U.S.C. § 1681b, "and no other." 15 U.S.C. § 1681b(a). None of the purposes listed under 15 U.S.C. § 1681b permit credit reporting agencies to furnish consumer reports to unauthorized or unknown entities such as those who accessed the Plaintiff's Private Information. Equifax violated 15 U.S.C. § 1681b by furnishing consumer reports to unauthorized or unknown entities, as detailed above.

43. Equifax furnished the Plaintiff's consumer reports by disclosing his consumer report to unauthorized entities; allowing unauthorized entities to access his consumer report; knowingly and/or recklessly failing to take security measures that would prevent unauthorized entities from accessing his consumer report; and/or failing to take reasonable security measures that would prevent unauthorized entities from accessing his consumer report.

44. Equifax willfully, knowingly, or with reckless disregard, failed to adopt and maintain reasonable procedures designed to limit the furnishing of Plaintiff's consumer report to the purposes listed under 15 U.S.C. § 1681b when it enabled and facilitated the Security Breach. Equifax failed to adequately vet users of its consumer reports, failed to inquire into suspicious circumstances despite possessing knowledge that put it on inquiry notice,

and failed to reasonably monitor its customers' acquisition and use of Plaintiff's consumer report.

45. Equifax willfully, knowingly, or with reckless disregard, failed to comply with the FCRA's requirements with respect to the Plaintiff. As a result of Equifax's failures, they transmitted Plaintiff's Private Information to criminals for illegitimate and unauthorized purposes.

46. Equifax's willful and/or reckless conduct provided a means for unauthorized intruders to obtain and misuse Plaintiff's Private Information for no permissible purposes under the FCRA.

47. As a further direct and foreseeable result of Equifax's willful noncompliance with FCRA, Plaintiff's Private Information will remain posted online in the public domain, compromised, and in possession of unauthorized third parties with fraudulent intent.

48. Plaintiff has been damaged by Equifax's willful or reckless failure to comply with the FCRA. Therefore, Plaintiff is entitled to recovery "any actual damages sustained by the consumer…or damages of not less than $100 and not more than $1,000." 15 U.S.C. § 1681n(a)(1)(A).

49. Plaintiff is also entitled to punitive damages, costs of the action, and reasonable attorneys'' fees. 15 U.S.C. § 1681n(a)(2) & (3).

COUNT II

Negligent Violation of the Fair Credit Reporting Act

50. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

51. Equifax negligently failed to adopt and maintain reasonable procedures designed to limit the furnishing of Plaintiff's consumer report to the purposes listed under 15 U.S.C. §

1681b. Equifax's negligent failure to maintain reasonable procedures is supported by, among other things, former employees' admissions that Equifax's data security practices have deteriorated in recent years, and Equifax's numerous other data breaches in the past. Further as an enterprise claiming to be an industry leader in data breach prevention, Equifax was well aware of the importance of the measures organizations should take to prevent data breaches, yet failed to take them.

52. Defendant failed to adequately vet users of its consumer reports, failed to inquire into suspicious circumstances despite possessing knowledge that put it on inquiry notice, and failed to reasonably monitor its customers' acquisition and use of consumer reports.

53. Plaintiff's Private Information was wrongfully furnished to unauthorized third parties for no permissible purposes as a direct and foreseeable result of Equifax's negligent failure to adopt and maintain such reasonable procedures.

54. Equifax's negligent conduct provided a means for unauthorized intruders to obtain Plaintiff's Private Information and consumer report for no permissible purpose under the FCRA.

55. As a direct and foreseeable result, Plaintiff's consumer report was accessed, made accessible to, stolen, furnished, and sold to unauthorized third parties for illegitimate and unauthorized purposes.

56. As a result of Defendant's negligent violations of FCRA, as described above, Plaintiff's was (and continues to be) injured and has suffered (and will continue to suffer) the damages described in detail above.

57. Plaintiff has been damaged by Equifax's negligent failure to comply with the FCRA. Therefore, Plaintiff is entitled to recover "any actual damages sustained by the consumer." 15 U.S.C. § 1681o(a)(1).

58. Plaintiff is also entitled to recovery their costs of the action, as well as reasonable attorneys' fees. 15 U.S.C. § 1681o(a)(2).

COUNT III

Violation of New York General Business Law §349

59. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

60. Plaintiff was subjected to Defendant's unfair or deceptive acts or practices, in violation of N.Y. Gen. Bus. Law. §349, in failing to properly implement adequate, commercially reasonable security measures to protect their Private Information.

61. Equifax willfully ignored the clear and present risk of a security breach of its systems and failed to implement and maintain reasonable security measure to prevent, detect, and mitigate the Security Breach.

62. Equifax benefitted from not taking preventative measures and implementing adequate security measures that would have prevented, detected, and mitigated the Security Breach.

63. Equifax's failure to implement and maintain reasonable security measures caused and continues to cause substantial injury to Plaintiff that is not offset by countervailing benefits to consumers or competition or reasonable avoidable by consumers.

64. Equifax's conduct offends public policy and is immoral, unethical, oppressive, and unscrupulous, and causes substantial injury to consumers.

65. Plaintiff has suffered actual ascertainable losses including improper disclosure of their Private Information, lost value of their Private Information, lost time and money incurred to mitigate and remediate the effects of the Security Breach, including the increased risk of identity theft that resulted and continues to face them.

66. Plaintiff's injuries and losses were proximately caused by Defendant's violations of NY Gen. Bus. Law. § 349, which was conducted with reckless indifference toward the rights of others, such that an award of punitive and/or treble damages is warranted.

COUNT VI

Negligence

67. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

68. Upon accepting and storing the Plaintiff's Private Information in its computer systems and on its networks, Equifax undertook and owed a duty to Plaintiff to exercise reasonable care to secure and safeguard that information and to use commercially reasonable methods to do so. Equifax knew that the Plaintiff's Private Information was confidential and of value and should be protected as private and confidential.

69. Equifax owed a duty of care not to subject Plaintiff, along with their Private Information, to an unreasonable risk of harm because they were foreseeable and probable victims of any inadequate security practices.

70. Equifax owed numerous duties to Plaintiff. These duties include the duty:

   a. to exercise reasonable care in obtaining, retaining, securing, safeguarding, deleting, and protecting Plaintiff's Private Information in its possession;

   b. to protect Plaintiff's Private Information in its possession using reasonable and adequate security procedures that are compliant with industry-standard practices; and

c. to implement processes to quickly detect a data breach and to timely act on warnings about data breaches, including promptly notifying Plaintiff of the Security Breach.

71. Equifax knew or should have known the risks of collecting and storing Private Information and the importance of maintaining secure systems. Equifax knew of the many breaches that targeted other entities in the years preceding the Security Breach.

72. Equifax knew or should have known that its systems did not adequately safeguard Plaintiff's Private Information.

73. Equifax breached its duties to Plaintiff by failing to provide fair, reasonable, or adequate computer systems and data security practices to safeguard the Private Information of Plaintiff.

74. Because Equifax knew that a breach of its systems would damage millions of individuals, including Plaintiff, Equifax had a duty to adequately protect their data systems and the Private Information contained therein.

75. Equifax has a special relationship with Plaintiff. Plaintiff's willingness to entrust Equifax with their Private Information was predicated on the understanding that Equifax would take adequate security precautions. Moreover, only Equifax had the ability to protect its systems and the Private Information stored on them from attack.

76. Equifax's own conduct also created a foreseeable risk of harm to Plaintiff and their Private Information. Equifax's misconduct including failing to: (1) secure its systems, despite knowing their vulnerabilities, (2) comply with industry standard security practices, (3) implement adequate system and even monitoring, and (4) implement the systems, policies, and procedures necessary to prevent this type of breach.

77. Equifax also had independent duties under NY State and federal laws that required Equifax to reasonably safeguard Plaintiff's Private Information and promptly notify them about the Security Breach.

78. Equifax breached the duties it owed to Plaintiff in several ways, including:

    a. by failing to implement adequate security systems, protocols and practices sufficient to protect his Private Information and thereby creating a foreseeable risk of harm;

    b. by failing to comply with the minimum industry data security standards; and by failing to timely and accurately discovery and disclose to Plaintiff that his Private Information had been improperly acquired or accessed.

79. Through Equifax's acts and omissions described in this Complaint, including Equifax's failure to provide adequate security and its failure to project the Plaintiff's Private Information from being foreseeably captured, accessed, disseminated, stolen and misused, Equifax unlawfully breached its duty to use reasonable care to adequately protect and secure the Plaintiff's Private Information during the time it was within Equifax's possession and control.

80. The law further imposes an affirmative duty on Equifax to timely disclose the unauthorized access and theft of Plaintiff's Private Information to Plaintiff so that Plaintiff can take appropriate measures to mitigate damages, protect against adverse consequences, and thwart future misuses of their Private Information.

81. Through its failure to provide timely and clear notification of the Security Breach to Plaintiff, Equifax prevented Plaintiff from taking meaningful, proactive steps to secure their financial data and bank accounts.

82. Equifax's conduct was grossly negligent and departed from all reasonable standards of care, including but not limited to: failing to adequately protect the Plaintiff's Private Information; failing to conduct regularly security audits; failing to provide adequate and appropriate supervision of persons having access to Plaintiff's Private Information; and failure to provide Plaintiff with timely and sufficient notice that their Private Information had been compromised.

83. But for Equifax's wrongful and negligent breach of the duties it owed to Plaintiff, their Private Information would not have been compromised.

84. The injury and harm that Plaintiff has suffered was the direct and proximate result of Equifax's negligent conduct.

85. Plaintiff did not contribute to the Security Breach and subsequent misuse of their Private Information as described in this Complaint.

86. As a direct and proximate cause of Equifax's conduct, Plaintiff suffered damages that nature and forms of which may take years to detect.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in their favor and against Equifax, as follows:

A. Ordering Equifax to pay actual damages to Plaintiff;

B. Ordering Equifax to pay statutory damages to Plaintiff;

C. Ordering Equifax to pay punitive damages, as allowable by law, to Plaintiff;

D. Ordering Equifax to pay attorneys' fees and litigation costs to Plaintiff;

E. Ordering Equifax to pay both pre- and post-judgment interest on any amounts awarded as allowable by law; and

F. Ordering such other and further relief as may be just and proper.

Date: Floral Park, NY
September 21, 2017

THE PLAINTIFF

/s/ Ryan Gentile
By:______________________________

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